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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/091,877

03/05/2002

Philip T. Feldsine

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03/02/2004

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 6300
SEATTLE, WA 98104-7092

EXAMINER

WINKLER, ULRIKE

ART UNIT

PAPER NUMBER

1648

DATE MAILED: 03/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/091,877

Applicant(s)

FELDSINE ET AL.

Examiner

Ulrike Winkler

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on December 3, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1648

DETAILED ACTION

The Amendment filed December 3, 2003 in response to the Office Action of September 8, 2003 is acknowledged and has been entered. Claims 1-4 and 27 are pending and are currently being examined.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 102

The rejection of claims 1, 3 and 27 under 35 U.S.C. 102(b) as being anticipated by Atrache et al. (U.S. Pat. No.5,415,997, see IDS) **is withdrawn** in view of Applicant's amendment to the claims.

The rejection of claims 1-4 and 27 under 35 U.S.C. 102(b) as being anticipated by Marino et al. (Journal of Bacteriology 1991, see IDS) **is withdrawn** in view of Applicant's amendment to the claims.

The rejection of claims 1-4 and 27 under 35 U.S.C. 102(b) as being anticipated by Ohyama et al. (Journal of Bacteriology 1992, see IDS) **is withdrawn** in view of Applicant's amendment to the claims.

Art Unit: 1648

New rejection in view of Applicant's amendments:

Claims 1, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Deng et al. (Antimicrobial Agents and Chemotherapy, 1995).

The instant invention is drawn to a composition comprising a general enrichment media including at least one structure modifying organic chemical, and a method of propagating the microorganism.

Deng et al. disclose the culturing of *Mycobacterium smegmatis* in glycol-alanine-salts medium in the presence of Tween 80 and ethambutol, a structure modifying compound (see page 696, paragraph spanning column 1 and 2). Therefore, the instant invention is anticipated by Deng et al.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deng et al. (Antimicrobial Agents and Chemotherapy, 1995) in view of Marino et al. (Journal of Bacteriology 1991, see IDS) and Ohyama et al. (Journal of Bacteriology 1992, see IDS).

The instant invention is drawn to a composition comprising a general enrichment media including at least one structure modifying organic chemical, and a method of propagating the

Art Unit: 1648

microorganism. Wherein the structure modifying compound is selected from 2,4-dinitrophenol (DNP) or carbonyl cyanide-m-chlorophenyl hydrazone

Deng et al. teaches the culturing of *Mycobacterium smegmatis* in glycol-alanine-salts medium in the presence of Tween 80 and ethambutol, a structure modifying compound (see page 696, paragraph spanning column 1 and 2). The use of Tween in the growth medium is to prevent clumping of the microorganism. The reference does not disclose incubating the microorganism using 2,4-dinitrophenol (DNP) or carbonyl cyanide-m-chlorophenyl hydrazone.

Marino et al. teach incubating microorganism in growth medium (PPBE) and 1 mM 2,4-dinitrophenol (DNP).

Ohyama et al. teach incubating microorganism in growth medium in the presence of carbonyl cyanide-m-chlorophenyl hydrazone.

It would have been obvious to one of ordinary skill in the art to add a detergent to the growth medium comprising a microorganism in order to avoid the clumping of the microorganism as set out in Deng et al. One having ordinary skill in the art would have had a high expectation of success in adding the detergent to the procedures set out in Ohyama et al. or Marino et al. Therefore, the instant invention would have been obvious over Deng et al. in view of Marino et al. and Ohyama et al.

Conclusion

No claims allowed.

Art Unit: 1648

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

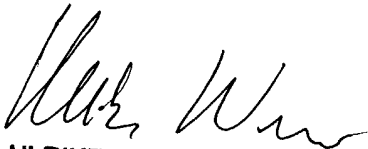
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ulrike Winkler, Ph.D. whose telephone number is 571-272-0912. The examiner can normally be reached M-F, 8:30 am - 5 pm. The examiner can also be reached via email [ulrike.winkler@uspto.gov].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached at 571-272-0902.

The official fax phone number for the organization where this application or proceeding is assigned is 703-872-9306; for informal communications please the fax phone number is 571-273-0912

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.


ULRIKE WINKLER, PH.D.
PATENT EXAMINER
2/24/04